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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,391

03/02/2004

Alexander C. Chan

J6887(C)

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7590

11/07/2005

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/791,391

Applicant(s)

CHAN ET AL.

Examiner

Eisa B. Elhilo

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1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

- 1 This action is responsive to the amendment filed on September 12, 2005.
- 2 The cancellation of claims 9 and 17, is acknowledged. Pending claims are 1-8, 10-16 and 18.
- 3 The obviousness-type double patenting rejection is maintained, for the reasons set forth in the previous office action mailed on August 5, 2005.

New ground of rejection

#### *Claim Rejections - 35 USC § 103*

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 3 Claims 1-8, 10, 13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarojini et al. (US 2003/0154562 A1).

Sarojini et al (US' 562 A1) teaches a method for coloring hair comprising applying to the hair a mixture of oxidative dye precursors such as para-phenylenediamine followed by contacting the hair with a mixture of oxidizing agents such as peroxide and alkali metal salt persulfates as claimed in claims 1-4 (see page 10, claim 1 and page 5, paragraph, 0096), the method wherein the primary intermediates are presented in the amounts of 0.001 to 5% which overlapped with the claimed range as claimed in claim 5 (see page 2, paragraph, 0041), the method wherein the oxidizing mixture comprising hydrogen peroxide as claimed in claim 10 (see

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page 5, paragraph, 0096). Sarojini et al. (US' 562 A1) also teaches similar kit as claimed in claims 13 and 16 (see paragraph, 11, claim 17).

The instant claims differ from the reference by reciting the weight ratio of persulfate salt to peroxide to be in the range of 1 to about 4 as claimed.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a composition for dyeing hair by obtaining the claimed weight ratio of persulfates to peroxide in the composition to arrive at the claimed composition because the reference clearly teaches that a mixture of oxidizing compounds (peroxides and persulfates) are presented in the percentage amounts of 0.1 to 1.5% (see page 3, paragraph, 0061 and 5, paragraph, 0096), and thus a person of the ordinary skill in the art would be motivated to optimize ratio of the oxidizing compounds in the dyeing composition in order to get the maximum effective amounts, absent unexpected results.

With respect to claims 6 -8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a composition for dyeing hair by selecting the dye precursors in the anionic or nonionic form and to form an aqueous developers that comprises a powder persulfates salt because the reference generally teaches and discloses similar dye precursors such as para-phenylenediamines and oxidizing agents (developers) such as hydrogen peroxide and alkali-metal persulfates (see page, 3, paragraph, 0079 and page 5, paragraph, 0096), and, thus, a person of the ordinary skill in the art would be motivated to formulate such a dyeing composition for dyeing hair and would expect such a composition to have similar properties and similar results to those claimed, absent unexpected results..

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4 Claims 11,12 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarojini et al. (US 2003/0154562 A1) in view of Dias (US 6,540,791 B1)

The disclosure of Sarojini et al. (US' 562 A1) as described above, does not teach or disclose the aligning and distributing means as claimed.

Dias (US' 791 B1) in analogous art of hair dyeing formulation, teaches a method for dyeing hair comprising applying to the hair a distributinh means such as comb and brush (see col. 49, lines 25-27)

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made to apply to the hair an aligning and distributing means such as brushes or combs with a reasonable expectation of success because Dias (US' 791) clearly teaches that the composition may be applied directly to the hair or via some vehicle such as brushes, combs or applicators (see col. 49, lines 25-27), and, thus, a person of the ordinary skill in the art would be motivated to apply such a vehicle as taught by Dias (US' 791 B1) in the method described be Sarojini et al. (US' 562 A1) and would expect such a method to have similar properties to those claimed, absent unexpected results.

#### ***Response to Applicant's Arguments***

5 Applicant's arguments with respect to claims 1-5, 10, 13, 16 and 17 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

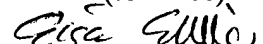
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Eisa Elhilo  
Patent Examiner  
Art unit 1751

November 1, 2005